

## REMARKS

### **I. Summary of the Office Action Mailed October 8, 2009**

In the Office Action mailed October 8, 2009 (the “Office Action”), the Examiner stated that the Supplemental Vallino Declaration filed on September 14, 2009 under 37 C.F.R § 1.131 was “insufficient to establish a conception of the invention prior to the effective date of the Shesol reference.” (Office Action at 2.)

Further, the Examiner rejected claims 1, 34, and 38-39 on the ground of non-statutory obviousness-type double patenting as allegedly being unpatentable over claims 1-5 of U.S. Patent No. 6,526,981.

In addition, the Examiner rejected claim 1 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,257,240 (“Shesol”) in view of U.S. Patent No. 4,237,010 listing Grabenkort *et al.* as inventors. Applicant notes that U.S. Patent No. 4,237,010 lists Zimmerly as the sole inventor (not Grabenkort), and appears to be directed to an unrelated technology. However, U.S. Patent No. 5,238,010 lists Grabenkort *et al.* as inventors and is listed by the Examiner in the “Notice of References Cited,” mailed on November 27, 2007. Accordingly, Applicant has proceeded herein as though the Examiner intended to cite U.S. Patent No. 5,238,010 (“Grabenkort”).

The Examiner rejected the remaining claims under 35 U.S.C. § 103(a) as allegedly being unpatentable over Shesol and Grabenkort in view of various other references: claims 31-33 in view of U.S. Patent No. 6,142,966 (“Hely”); claims 34-35 in view of U.S. Patent No. 5,722,959 (“Bierman”); claims 36-37 in view of U.S. Patent No. 5,807,300 (“Nix”); and claims 38-39 in view of U.S. Patent No. 6,132,399 (“Shultz”).

### **II. Status of the Claims**

Claims 1-60 are currently pending, with claims 2-30 and 40-60 having been previously withdrawn from consideration. Claims 1 and 31-39 are currently pending and stand rejected. No claims have been amended by way of this response.

### **III. Response to the Double Patenting Rejection**

Applicant notes that claims 1, 34, and 38-39 stand provisionally rejected as being allegedly unpatentable for non-statutory obviousness-type double patenting over claims 1-5 of

U.S. Patent No. 6,526,981. Applicant respectfully submits that upon allowance of the pending claims, Applicant will submit a terminal disclaimer in compliance with 37 C.F.R. § 1.321(c).

#### **IV. Response to the Rejections Under 35 U.S.C. § 103(a)**

As stated above, the Examiner rejected claim 1 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Shesol in view of Grabenkort. The effective filing date of Shesol is June 5, 2000. Applicant had previously submitted a Supplemental Declaration of Lisa M. Vallino under 37 C.F.R. § 1.131 with the office action response filed on September 14, 2009. The Examiner stated that the evidence submitted was insufficient to establish a conception of the invention prior to the effective date of the Shesol reference.

The Examiner was kind enough to grant Applicant's representative an interview on January 19, 2010 to discuss the content of the Supplemental Declaration. During the interview, the Examiner explained that the Supplemental Declaration needs "to provide evidence, either through exhibit or description, that the fabric connector did not traverse the sidewall of the housing in order to show that the particular feature was conceived prior to the prior art date of June 5, 2000." (Interview Summary Mailed February 2, 2010.)

Accordingly, Applicant submits herewith an updated Supplemental Declaration of Lisa M. Vallino under 37 C.F.R. § 1.131 that contains sufficient evidence, through exhibit and description, to establish that, prior to the effective filing date of Shesol, the Applicant had conceived and reduced to practice the disclosure of independent claim 1 as follows:

1. A site guard, comprising:

- (a) a hollow member having a U-shaped base, the base having an edge to be positioned upon a patient adjacent a site, the base having a width sufficient to straddle the site and a length and a height sufficient to cover the site, the base joined to a sidewall to form a cover;
- (b) a member flange attached to the lower edge of the hollow member;
- (c) at least one fabric connector affixed to the member flange such that it does not traverse the sidewall;
- (d) means for affixing the hollow member to the at least one fabric connector; and
- (e) means for closing the fabric connector on the patient.

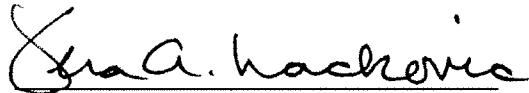
Thus, Shesol is not prior art to the present Application.

Moreover, Grabenkort does not teach or disclose the present invention as it does not teach "a hollow member" with "at least one fabric connector." Applicant respectfully requests that this rejection be withdrawn and submits that independent claim 1 and claims 31-39, which depend therefrom, are patentable.

#### V. Conclusion

For at least the foregoing reasons, Applicant submits that all pending claims are in condition for allowance and respectfully requests notice to that effect. Should the Examiner wish to discuss the case with the undersigned, the Examiner is invited to call the undersigned at 312-701-8115.

Respectfully submitted,



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